JUDGE SEIBEL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

14 CV 5321

Michael Bay,

                Plaintiff,

    v.

ADT LLC d/b/a ADT Security Systems; and
DOES 1-10, inclusive,

                Defendants.

Civil Action No.: _____

COMPLAINT

2014 JUL 15 PM 4: 34
S.D. OF N.Y.
U.S. DISTRICT COURT
FILED

For this Complaint, the Plaintiff, Michael Bay, by undersigned counsel, states as follows:

JURISDICTION

1.   This action arises out of the Defendants' repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").

2.   Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.

3.   Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Defendants transact business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

4.   The Plaintiff, Michael Bay ("Plaintiff"), is an adult individual residing in Davenport, Iowa, and is a "person" as defined by 47 U.S.C.A. § 153(39).

5.   The Defendant, ADT LLC d/b/a ADT Security Systems ("ADT"), is a business entity with an address of 445 Hamilton Avenue, White Plains, New York 10601, and is a "person" as defined by 47 U.S.C.A. § 153(39).

6.   Does 1-10 (the "Agents") are individual agents employed by ADT and whose identities are currently unknown to the Plaintiff. One or more of the Agents may be joined as

parties once their identities are disclosed through discovery.

     7.   ADT at all times acted by and through one or more of the Agents.

FACTS

     8.   In or around May 2014, ADT began calling Plaintiff's residential telephone, number 563-XXX-2074, using an automated telephone dialing system ("ATDS") and by using an artificial or prerecorded message.

     9.   When Plaintiff answered calls from ADT he heard a prerecorded message instructing Plaintiff to wait for the next available representative.

     10.   Plaintiff never provided his residential telephone number to ADT and never provided his written express consent to receive calls from ADT about their services.

     11.   During a conversation with ADT, Plaintiff told ADT that he was not interested in their services and directed ADT to stop calling his telephone.

     12.   However, ADT continued to place calls with prerecorded messages to Plaintiff's residential telephone.

COUNT I

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, *et seq.*

     13.   The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

     14.   Without prior consent the Defendants made telephone calls to the Plaintiff's residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the Plaintiff in violation of 47 U.S.C. § 227(b)(1)(B).

     15.   The calls from Defendants to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

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16.   As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of $500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

17.   As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to $1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays that judgment be awarded in the Plaintiff's favor and against the Defendants as follows:

1. Statutory damages of $500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);

2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and

3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: July 8, 2014

Respectfully submitted,

By
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